

(i) The basis for evaluation;
(ii) An analysis of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;

(iii) A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and

(iv) A summary of findings.

(b) All proposals received in response to a solicitation may be rejected if the agency head determines in writing that—

(1) All otherwise acceptable proposals received are at unreasonably prices;

(2) The proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see subpart 3.3 for reports to be made to the Department of Justice);

(3) A cost comparison as prescribed in OMB Circular A-76 and subpart 7.3 shows that performance by the Government is more economical; or

(4) For other reasons, cancellation is clearly in the Government's interest.

(5) A violation or possible violation of section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), has occurred (see 3.104).

(c) The requirements of 14.408-3, Prompt payment discounts, are applicable to negotiated acquisitions.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 50 FR 26903, June 28, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 36795, Sept. 6, 1990; 60 FR 16719, Mar. 31, 1995; 60 FR 34739, July 3, 1995]

15.609 Competitive range.

(a) The contracting officer shall determine which proposals are in the competitive range for the purpose of conducting written or oral discussion (see 15.610(b)). The competitive range shall be determined on the basis of cost or price and other factors that were stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is in the competitive range, the proposal should be included.

(b) If the contracting officer, after complying with 15.610(b), determines that a proposal no longer has a reasonable chance of being selected for con-

tract award, it may no longer be considered for selection.

(c) The contracting officer shall notify in writing an unsuccessful offeror at the earliest practicable time that its proposal is no longer eligible for award (see 15.1002(b)).

(d) If the contracting officer initially solicits unpriced technical proposals, they shall be evaluated to determine which are acceptable to the Government or could, after discussion, be made acceptable. After necessary discussion of these technical proposals is completed, the contracting officer shall (1) solicit price proposals for all the acceptable technical proposals which offer the greatest value to the Government in terms of performance and other factors and (2) make award to the low responsible offeror, either without or following discussion, as appropriate. Except in acquisition of architect-engineer services (see subpart 36.6), a competitive range determination must include cost or price proposals.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 42655, Aug. 16, 1995]

15.610 Written or oral discussion.

(a) The requirement in paragraph (b) of this section for written or oral discussion need not be applied in acquisitions—

(1) In which prices are fixed by law or regulation;

(2) Of the set-aside portion of a partial set-aside; or

(3) In which the solicitation notified all offerors that the Government intends to evaluate proposals and make award without discussion, unless the contracting officer determines that discussions (other than communications conducted for the purpose of minor clarification) are considered necessary (see 15.407(d)(4)). Once the Government states its intent to award without discussion, the rationale for reversal of this decision shall be documented in the contract file.

(b) Except as provided in paragraph (a) of this section, the contracting officer shall conduct written or oral discussions with all responsible offerors who submit proposals within the competitive range. The content and extent

of the discussions is a matter of the contracting officer's judgment, based on the particular facts of each acquisition (but see paragraphs (c) and (d) of this section).

(c) The contracting officer shall—

(1) Control all discussions;

(2) Advise the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the Government's requirements;

(3) Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal;

(4) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process (see 15.607 and part 24);

(5) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussions; and

(6) Provide the offeror an opportunity to discuss past performance information obtained from references on which the offeror had not had a previous opportunity to comment. Names of individuals providing reference information about an offeror's past performance shall not be disclosed.

(d) The contracting officer and other Government personnel involved shall not engage in technical leveling (i.e., helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal).

(e) The following conduct may constitute prohibited conduct under section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), and subpart 3.104 to which civil and criminal penalties and administrative remedies apply.

(1) Technical transfusion (i.e., Government disclosure of technical information pertaining to a proposal that results in improvement of a competing proposal); or

(2) Auction techniques, such as—

(i) Indicating to an offeror a cost or price that it must meet to obtain further consideration;

(ii) Advising an offeror of its price standing relative to another offeror (however, it is permissible to inform an offeror that its cost or price is considered by the Government to be too high or unrealistic); and

(iii) Otherwise furnishing information about other offerors' prices.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 36795, Sept. 6, 1990; 56 FR 41733, Aug. 22, 1991; 60 FR 16719, Mar. 31, 1995; 60 FR 42655, Aug. 16, 1995]

15.611 Best and final offers.

(a) Upon completion of discussions, the contracting officer shall issue to all offerors still within the competitive range a request for best and final offers. Oral requests for best and final offers shall be confirmed in writing.

(b) The request shall include—

(1) Notice that discussions are concluded;

(2) Notice that this is the opportunity to submit a best and final offer;

(3) A common cutoff date and time that allows a reasonable opportunity for submission of written best and final offers; and

(4) Notice that if any modification is submitted, it must be received by the date and time specified and is subject to the Late Submissions, Modifications, and Withdrawals of Proposals provision of the solicitation (see 15.412).

(c) After receipt of best and final offers, the contracting officer should not reopen discussions unless it is clearly in the Government's interest to do so (e.g., it is clear that information available at that time is inadequate to reasonably justify contractor selection and award based on the best and final offers received). If discussions are reopened, the contracting officer shall issue an additional request for best and final offers to all offerors still within the competitive range.

(d) Following evaluation of the best and final offers, the contracting officer (or other designated source selection authority) shall select that source